

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6077 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MANISH CORPORATION & OTHERS

Versus

KRISHNA ROLLER FLOUR MILLS PVT. LTD. & ANR.

Appearance:

MR KB PUJARA for Petitioners

None present for Respondent No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 17/10/96

ORAL JUDGEMENT

Heard learned counsel for the petitioners and perused the Special Civil Application. The petitioners filed this Special Civil Application challenging thereunder the order dated 8-9-1986 passed by the Learned Principal Judge, City Civil Court, Ahmedabad in Caveat Application No.712 of 1986 in the Civil Suit No.128 of 1978 holding that the Caveat Application is not maintainable in the execution proceedings. Admittedly,

the petitioners are the original judgment debtors. This Special Civil Application has been admitted by this Court on 30th September, 1987 and the order passed by this Court reads as under:

Rule.

Interim relief in terms of Para No.4(b).

Respondents will be at liberty to move this Court for vacating and/or modifying the interim relief even by filing a note.

Interim relief in terms of para no.4(b) has been granted which means that the implementation and operation of the order dated 8-9-1986 of the court below has been stayed. The further prayer has been made by the petitioner in para no.4(b) of this Special Civil Application that the court below be directed that no order shall be passed against the petitioners-Caveators by the Execution Court without hearing the petitioners in compliance with the Caveat Application of the petitioners. The further proceedings in the execution proceeding have not been stayed. The Court was given the liberty to decide the matter after giving an opportunity of hearing to the petitioners. On 30th September, 1987, this court has given the liberty to the respondents to move this court for vacating and/or modifying the interim relief, but I do not find anything on the record of this Special Civil Application either any application or note of the respondents praying therein for the vacation or modification of the order aforesaid.

I do not consider it appropriate to go on the merits of the contentions raised by the learned counsel for the petitioners for the reason that this Special Civil Application is not maintainable in view of the two decisions of the Supreme Court in the case of Swetamber Sthanakwasi Jain Samiti and Anr. vs. Alleged Comtt. of Management reported in JT 1996 (3) SC 21, and in the case of Durga Prasad vs. Naveen Chandra & Ors. reported in JT 1996 (3) SC 564. The Supreme Court in the two aforesaid cases has held that the High Court will not permit extraordinary jurisdiction to be converted into a civil court under the ordinary law. When a suit pending between the parties the interim and miscellaneous orders passed by the Trial Court cannot be challenged by way of a writ petition. Exactly same is the case here, where the order passed by the Court below in the execution proceedings has been challenged by this Special Civil Application.

In the result, this Special Civil Application
fails and the same is dismissed. Rule discharged.
Interim relief, if any, granted by this Court stands
vacated.

zgs/-